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Location : All Courts [Help](#)**REGISTER OF ACTIONS**

CASE No. 103494-CV

James Burnett vs. GeoVera Specialty Insurance Company, et al

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§

Case Type: **Contract -
Consumer/Commercial/Debt**
 Date Filed: **06/28/2019**
 Location: **239th District Court**

PARTY INFORMATION

| | | |
|------------------|--|---|
| Defendant | GeoVera Specialty Insurance Company | Attorneys Rhonda J. Thompson <i>Retained</i> 214-871-8200(W) |
| Defendant | McClinton, Charles Henry | |
| Plaintiff | Burnett, James | Maria Gerguis <i>Retained</i> 713-655-1405(W) |

EVENTS & ORDERS OF THE COURT

| | | |
|------------|--|------------------------------|
| | OTHER EVENTS AND HEARINGS | |
| 06/28/2019 | Original Petition (1-10 Plaintiffs) (OCA) | |
| 06/28/2019 | Case Information Sheet | |
| 06/28/2019 | Request | |
| 06/28/2019 | Docket Sheet | |
| 06/28/2019 | Citation | |
| | GeoVera Specialty Insurance Company | Served 07/03/2019 |
| | McClinton, Charles Henry | Returned Unserved 07/08/2019 |
| | | Returned 07/08/2019 |
| 07/08/2019 | Service Returned | |
| 07/11/2019 | Service Returned | |
| 07/16/2019 | Petition | |
| 07/16/2019 | Request | |
| 07/16/2019 | Correspondence | |
| 07/17/2019 | Citation by Certified Mail | |
| | GeoVera Specialty Insurance Company | Unserved |
| 07/26/2019 | Answer | |
| 07/26/2019 | Jury Fee Paid | |
| 07/30/2019 | Notice | |

EXHIBIT 2



Notice of Service of Process

null / ALL
Transmittal Number: 20054699
Date Processed: 07/08/2019

Primary Contact: Patrick Power
GeoVera Insurance
1455 Oliver Road
Fairfield, CA 94534

Electronic copy provided to: Robert Hagedorn
Brian Prentice

Entity: Geovera Specialty Insurance Company
Entity ID Number 3215045

Entity Served: GeoVera Specialty Insurance Company

Title of Action: James Burnett vs. GeoVera Specialty Insurance Company

Document(s) Type: Citation/Petition

Nature of Action: Contract

Court/Agency: Brazoria County District Court, TX

Case/Reference No: 103494-CV

Jurisdiction Served: Texas

Date Served on CSC: 07/03/2019

Answer or Appearance Due: 10:00 am Monday next following the expiration of 20 days after service

Originally Served On: CSC

How Served: Certified Mail

Sender Information: Maria Gerguis
713-655-1405

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

Service I.D. No. 153583

THE STATE OF TEXAS

CAUSE NO. 103494-CV

239th District Court

James Burnett

vs.

GeoVera Specialty Insurance Company, et al

To: Geovera Specialty Insurance Company
By serving its Registered Agent
Corporation Service Company
211 East 7th Street, Suite 620
Austin, Texas 78701-3218

Defendant

Notice:

You have been sued. You may employ an attorney. If you or your Attorney do not file a written answer with the Clerk who issued this Citation by **10:00 a.m.** on the Monday next following the expiration of 20 days after you were served this **Citation and Plaintiff's Original Petition**, a Default Judgment may be taken against you. If filing Pro Se, said answer may be filed by mailing same to: Brazoria County District Clerk's office, 111 E. Locust, Suite 500, Angleton, TX 77515-4678 or by bringing said answer in person to the aforementioned address.

The case is presently pending before the **239th District Court** of Brazoria County sitting in Angleton, Texas, 77515 and was filed on the **28th day of June, 2019**.

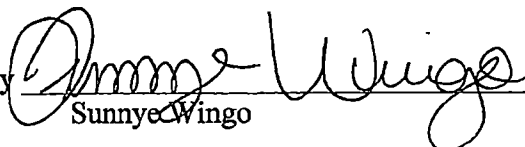
The name and address of the attorney filing this action (or party, if pro se') is **Maria Gerguis, Daly & Black, P.C., 2211 Norfolk St., Suite 800, Houston, TX 77098**.

CERTIFICATE OF DELIVERY BY MAIL

I hereby certify that on the **28th day of June, 2019**, at **2:30 p.m.** I mailed to **GeoVera Specialty Insurance Company** by certified mail a true copy of this Citation with a copy of the **Plaintiff's Original Petition** attached hereto.

Issued under and given under my hand and seal of said Court, at Angleton, Texas, on the **28th day of June, 2019**.

RHONDA BARCHAK, DISTRICT CLERK
Brazoria County, Texas

By  Deputy
Sunnye Wingo



Citation by R/A by Certified Mail

SERVICE COPY

Service I.D. No. 153583

**CAUSE No. 103494-CV
239th District Court
James Burnett vs. GeoVera Specialty Insurance Company, et al**

OFFICER'S RETURN BY MAIL

I hereby certify that on the _____ day of _____, 20____, the Defendant was served by registered mail or certified mail, with delivery restricted to addressee only, return receipt requested, a true copy of this citation with a copy of the petition attached thereto. Return receipt attached hereto.

OR

This citation was not executed for the following reason:

RHONDA BARCHAK, DISTRICT CLERK

By _____, Deputy

ATTACH
RETURN
RECEIPT
WITH
ADDRESSEE'S SIGNATURE

Filed for Record
6/28/2019 1:42 PM
Rhonda Barchak, District Clerk
Brazoria County, Texas
103494-CV
Sunnye Wingo, Deputy

CAUSE NO. 103494-CV

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|-----------------------------|---|-------------------------------------|
| JAMES BURNETT | § | IN THE DISTRICT COURT OF |
| | § | |
| Plaintiff | § | |
| | § | |
| vs. | § | BRAZORIA COUNTY, TEXAS |
| | § | |
| GEOVERA SPECIALTY INSURANCE | § | |
| COMPANY AND CHARLES HENRY | § | |
| MCCLINTON | § | <u> </u> JUDICIAL DISTRICT |
| | § | |
| Defendants | | |

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

James Burnett ("Mr. Burnett"), Plaintiff herein, files this Original Petition against Defendants GeoVera Specialty Insurance Company ("GeoVera") and Charles Henry McClinton ("McClinton") and, in support of his causes of action, would respectfully show the Court the following:

I.
THE PARTIES

1. James Burnett is a Texas resident who resides in Brazoria County, Texas.
2. GeoVera is an insurance company doing business in the State of Texas which may be served through its registered agent for service of process in the State of Texas, Corporation Service Company, via certified mail at 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.
3. Charles Henry McClinton is a Texas resident who participated in adjusting Mr. Burnett's insurance claim, and he may be served via certified mail at 4650 Westway Park Blvd., Houston, TX 77041-2007.

II.
DISCOVERY

4. This case is intended to be governed by Discovery Level 2.

III.
CLAIM FOR RELIEF

5. The damages sought are within the jurisdictional limits of this court. Plaintiff currently seeks monetary relief over \$100,000 but not more than \$200,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees.

IV.
JURISDICTION AND VENUE

6. This court has subject matter jurisdiction of this cause of action because it involves an amount in controversy in excess of the minimum jurisdictional limits of this Court. No diversity of citizenship exists in this matter.

7. Venue is proper in Brazoria County because all or a substantial part of the events or omissions giving rise to the claim occurred in Brazoria County. TEX. CIV. PRAC. & REM. CODE §15.002(a)(1). In particular, the loss at issue occurred in Brazoria County.

V.
FACTUAL BACKGROUND

8. Mr. Burnett is a named insured under a property insurance policy issued by GeoVera.

9. On or about November 8, 2018 a storm hit the Pearland, Texas area, damaging Mr. Burnett's house and other property. Mr. Burnett subsequently filed a claim on his insurance policy.

10. Defendants improperly denied and/or underpaid the claim.

11. Mr. McClinton was assigned as an individual adjuster on the claim, conducted a substandard investigation and inspection of the property, prepared a report that failed to include all

of the damages were observed during the inspection, and undervalued the damages observed during the inspection.

12. Mr. McClinton's unreasonable investigation led to the underpayment of Plaintiff's claim.

13. Moreover, GeoVera and Mr. McClinton performed an outcome-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair and inequitable evaluation of Plaintiff's losses on the property.

VI. **CAUSES OF ACTION**

14. Each of the foregoing paragraphs is incorporated by reference in the following:

A. Breach of Contract (GeoVera Only)

15. GeoVera had a contract of insurance with Plaintiff. GeoVera breached the terms of that contract by wrongfully denying and/or underpaying the claim and Plaintiff was damaged thereby.

B. Prompt Payment of Claims Statute (GeoVera Only)

16. The failure of GeoVera to pay for the losses and/or to follow the statutory time guidelines for accepting or denying coverage constitutes a violation of Article 542.051 *et seq.* of the Texas Insurance Code.

17. Plaintiff, therefore, in addition to Plaintiff's claim for damages, is entitled to interest and attorneys' fees as set forth in Article 542.060 of the Texas Insurance Code.

C. Bad Faith (GeoVera and McClinton)

18. Defendants are required to comply with Chapter 541 of the Texas Insurance Code.

19. Defendants violated § 541.051 of the Texas Insurance Code by:

- (1) making statements misrepresenting the terms and/or benefits of the policy.

20. Defendants violated § 541.060 by:

- (1) misrepresenting to Plaintiff a material fact or policy provision relating to coverage at issue;
- (2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability had become reasonably clear;
- (3) failing to promptly provide to Plaintiff a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;
- (4) failing within a reasonable time to affirm or deny coverage of a claim to Plaintiff or submit a reservation of rights to Plaintiff; and
- (5) refusing to pay the claim without conducting a reasonable investigation with respect to the claim;

21. Defendants violated § 541.061 by:

- (1) making an untrue statement of material fact;
- (2) failing to state a material fact necessary to make other statements made not misleading considering the circumstances under which the statements were made;
- (3) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;
- (4) making a material misstatement of law; and
- (5) failing to disclose a matter required by law to be disclosed.

22. Defendants' violations of Chapter 541 of the Texas Insurance Code enumerated above caused damages to Plaintiff in at least the amount of policy benefits wrongfully withheld.

23. Defendants knowingly committed the acts complained of. As such, Plaintiff is entitled to exemplary and/or treble damages pursuant to Texas Insurance Code § 541.152(a)-(b).

D. Attorneys' Fees

24. Plaintiff engaged the undersigned attorney to prosecute this lawsuit against Defendants and agreed to pay reasonable attorneys' fees and expenses through trial and any appeal.

25. Plaintiff is entitled to reasonable and necessary attorney's fees pursuant to TEX. CIV. PRAC. & REM. CODE §§ 38.001-38.003 because he is represented by an attorney, presented the claim to Defendants, and Defendants did not tender the just amount owed before the expiration of the 30th day after the claim was presented.

26. Plaintiff further prays that he be awarded all reasonable attorneys' fees incurred in prosecuting his causes of action through trial and any appeal pursuant to Sections 541.152 542.060 of the Texas Insurance Code.

**VII.
CONDITIONS PRECEDENT**

27. All conditions precedent to Plaintiff's right to recover have been fully performed, or have been waived by Defendants.

**VIII.
DISCOVERY REQUESTS**

28. Pursuant to Rule 194, you are requested to disclose, within fifty (50) days after service of this request, the information or material described in Rule 194.2(a)-(l).

29. You are also requested to respond to the attached interrogatories, requests for production and requests for admissions within fifty (50) days, in accordance with the instructions stated therein.

IX.
PRAYER

WHEREFORE, PREMISES CONSIDERED, James Burnett prays that, upon final hearing of the case, he recover all damages from and against Defendants that may reasonably be established by a preponderance of the evidence, and that Mr. Burnett be awarded attorneys' fees through trial and appeal, costs of court, pre-judgment interest, post-judgment interest, and such other and further relief, general or special, at law or in equity, to which Mr. Burnett may show himself to be justly entitled.

Respectfully submitted,

DALY & BLACK, P.C.

By: /s/ Maria Gerguis
Maria Gerguis
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Richard D. Daly
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2211 Norfolk St., Suite 800
Houston, Texas 77098
713.655.1405—Telephone
713.655.1587—Fax

ATTORNEYS FOR PLAINTIFF
JAMES BURNETT

CAUSE NO. 103494-CV

JAMES BURNETT
 Plaintiff,

vs.

GEOVERA SPECIALTY INSURANCE
 COMPANY AND CHARLES HENRY
 MCCLINTON,
 Defendants.

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IN THE DISTRICT COURT OF

BRAZORIA COUNTY, TEXAS

239TH JUDICIAL DISTRICT

**DEFENDANT GEOVERA SPECIALTY INSURANCE COMPANY'S
ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Defendant GEOVERA SPECIALTY INSURANCE COMPANY (hereinafter "Defendant") and file this, its original answer, and would respectfully show as follows:

I.

ORIGINAL ANSWER

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies the allegations contained within Plaintiff's Original Petition and demands strict proof thereon by a preponderance of the evidence in accordance with the laws of the State of Texas.

II.

DEMAND FOR JURY TRIAL

2. Defendant demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendant GEOVERA SPECIALTY INSURANCE COMPANY respectfully prays that Plaintiff take nothing on his claims against Defendant, that Defendant recover its costs herein, and that it receive such other and further relief, general or special, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Rhonda J. Thompson

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**ATTORNEYS FOR DEFENDANT
GEOVERA SPECIALTY INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

This is to certify that on the 26th day of July, 2019, a true and correct copy of the foregoing document was delivered to all counsel of record in accordance with the Texas Rules of Civil Procedure as follows:

Maria Gerguis
Richard D. Daly
Daly & Black, PC
2211 Norfolk Street, Suite 800
Houston, Texas 77098
mgerguis@dalyblack.com
rdaly@dalyblack.com
ecfs@dalyblack.com
Attorneys for Plaintiff

/s/ Rhonda J. Thompson
Rhonda J. Thompson

CAUSE NO. 103494-CV

JAMES BURNETT
Plaintiff,

vs.

GEOVERA SPECIALTY INSURANCE
COMPANY AND CHARLES HENRY
MCCLINTON,
Defendants.

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IN THE DISTRICT COURT OF

BRAZORIA COUNTY, TEXAS

239TH JUDICIAL DISTRICT

**DEFENDANT GEOVERA SPECIALTY INSURANCE COMPANY'S ELECTION OF
 LEGAL RESPONSIBILITY UNDER SECTION 542A.006 OF
THE TEXAS INSURANCE CODE**

TO THE HONORABLE JUDGE:

Defendant GeoVera Specialty Insurance Company ("GeoVera" or "Defendant"), files its Election of Legal Responsibility under Section 542A.006 of the Texas Insurance Code ("Election") as follows:

I.
RELEVANT BACKGROUND

1. Plaintiff James Burnett ("Plaintiff") filed a claim with GeoVera on or about November 8, 2018 for a storm loss occurring on or about that same date. GeoVera assigned claim number FG18013317 to the loss and the claim was adjusted by its representative Defendant Charles Henry McClinton ("McClinton" or "adjuster defendant") at GeoVera's request. For purposes of this Election, the adjuster defendant is considered GeoVera's "agent" under Texas Insurance Code section 542.A.001, which defines the term "agent" as an employee, agent, representative, or adjuster who performs any act of GeoVera's behalf.

2. On June 28, 2019, Plaintiff filed this action on claim number FG18013317 in the 239th Judicial District Court of Brazoria County, Texas, naming GeoVera, and McClinton as Defendants.

II.
ELECTION

3. Under section 542A.006(a) of the Texas Insurance Code, GeoVera hereby elects to accept legal responsibility for whatever liability the adjuster defendant might have to Plaintiff for his acts or omissions related to claim number FG18013317 and by this pleading, Plaintiff is provided written notice of GeoVera's Election.

III.
DISMISSAL OF ADJUSTER DEFENDANT WITH PREJUDICE

4. Under section 542A.006(c) of the Texas Insurance Code and based on GeoVera's Election, this Court "shall dismiss" this action against McClinton with prejudice. GeoVera hereby requests the Court enter all such documents necessary to effectuate this dismissal with prejudice.

IV.
PRAYER

FOR THESE REASONS, GeoVera Specialty Insurance Company respectfully requests that McClinton be dismissed from this action with prejudice as mandated under Chapter 542A of the Texas Insurance Code.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Rhonda J. Thompson

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**ATTORNEYS FOR DEFENDANT
GEOVERA SPECIALTY INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

This is to certify that on the 30th day of July, 2019, a true and correct copy of the foregoing document was delivered to all counsel of record in accordance with the Texas Rules of Civil Procedure as follows:

Maria Gerguis
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Attorneys for Plaintiff

/s/ Rhonda J. Thompson
Rhonda J. Thompson